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SENATE BILL 309

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO CONSERVATION; ENACTING THE LAND, WILDLIFE AND CLEAN ENERGY ACT; PROVIDING FOR THE DISTRIBUTION OF PROCEEDS FROM THE OIL AND GAS CONSERVATION TAX; CREATING A BOARD; CREATING FUNDS; AUTHORIZING THE ISSUANCE OF BONDS; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 12 of this act may be cited as the "Land, Wildlife and Clean Energy Act".

Section 2. [NEW MATERIAL] PURPOSE.--The purpose of the Land, Wildlife and Clean Energy Act is to fund projects, conservation easements and fee land acquisitions in order to protect the land base available for working farms or ranches, forests or watersheds, natural areas, outdoor recreation and trails and wildlife habitat; to fund land and habitat

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1 restoration and management projects; and to fund clean energy
2 development projects.

3 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
4 Land, Wildlife and Clean Energy Act:

5 A. "authority" means the New Mexico finance
6 authority;

7 B. "board" means the land, wildlife and clean
8 energy board;

9 C. "clean energy development project" means a
10 project that increases:

11 (1) energy efficiency;

12 (2) the conservation of energy; or

13 (3) the production of energy using biomass,
14 geothermal, hydrogen, solar or wind power;

15 D. "conservation project" means preservation,
16 rehabilitation, restoration or management activities directed
17 at:

18 (1) natural areas;

19 (2) working farms or ranches;

20 (3) wildlife or its habitats;

21 (4) outdoor recreation areas and trails;

22 (5) forests or watersheds; or

23 (6) other ecologically damaged lands;

24 E. "department" means the energy, minerals and
25 natural resources department;

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1 F. "director" means the director of the board;

2 G. "Indian tribe" means a federally recognized
3 Indian nation, tribe or pueblo located wholly or partially in
4 New Mexico; a governmental unit or wholly owned enterprise of
5 such an Indian nation, tribe or pueblo; or a consortium of
6 those Indian tribes, nations, pueblos or entities;

7 H. "public or private clean energy development
8 agency" means a governmental body or a private not-for-profit
9 charitable corporation or trust authorized to do business in
10 New Mexico that has tax-exempt status under the federal
11 Internal Revenue Code of 1986 and is authorized to conduct
12 clean energy development projects;

13 I. "public or private conservation agency" means a
14 governmental body or a private not-for-profit charitable
15 corporation or trust authorized to do business in New Mexico
16 that has tax-exempt status as a public charity under the
17 federal Internal Revenue Code of 1986, and the power to
18 acquire, hold or maintain land or interests in land; and

19 J. "qualified entity" means a state agency; a
20 political subdivision of the state; an Indian tribe; a school
21 district; a state educational institution named in Article 12,
22 Section 11 of the constitution of New Mexico; or a public or
23 private conservation or clean energy development agency.

24 Section 4. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY
25 BOARD CREATED--APPOINTMENTS--TERMS.--

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1 A. The "land, wildlife and clean energy board" is
2 created and is administratively attached to the department.

3 B. The board consists of fourteen members as
4 follows:

5 (1) the secretary of energy, minerals and
6 natural resources or the secretary's designee;

7 (2) the director of the New Mexico department
8 of agriculture or the director's designee;

9 (3) the director of the department of game and
10 fish or the director's designee;

11 (4) the state engineer or the state engineer's
12 designee; and

13 (5) ten public members appointed by the
14 governor with the advice and consent of the senate, with one
15 representative from each of the following occupations,
16 interests or activities:

17 (a) wind, solar or biomass energy;

18 (b) energy conservation and efficiency;

19 (c) farm production; provided that the
20 representative's primary occupation is farm production;

21 (d) municipalities and counties;

22 (e) land or natural area protection
23 trust;

24 (f) wildlife management and
25 conservation;

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- 1 (g) tribal land conservation;
- 2 (h) community land grants and acequias;
- 3 (i) livestock or dairy production;
- 4 provided that the representative's primary occupation is
- 5 raising livestock or in dairy production; and
- 6 (j) hunting or fishing.

7 C. Appointed members of the board shall serve
8 staggered terms of four years; provided that at the time of
9 making the first appointments, the governor shall designate
10 one-half of the appointed board members' first terms as being
11 two years and one-half of the members' first terms as being for
12 four years so that the terms of no more than five appointed
13 members will expire at the same time. The governor shall
14 appoint the chair of the board. A vacancy on the board shall
15 be filled for the remainder of the term of that appointee.
16 Appointed members of the board shall receive reimbursement for
17 expenses incurred in the performance of their duties pursuant
18 to the Per Diem and Mileage Act and shall receive no other
19 compensation, perquisite or allowance.

20 Section 5. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY
21 BOARD--POWERS--DUTIES.--

22 A. The board shall employ a director, who shall
23 hire personnel, not to exceed five full-time employees or the
24 equivalent, and contract for services necessary to carry out
25 the purposes of the Land, Wildlife and Clean Energy Act. The

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1 director shall develop and implement plans and a budget as
2 directed by the board.

3 B. The department shall be reimbursed for costs
4 incurred for any administrative support provided to the board
5 and the director. The board shall have an independent audit of
6 the board's finances conducted annually.

7 C. The board shall promulgate rules:

8 (1) for the management of board-funded
9 projects;

10 (2) to govern the application and selection
11 process for projects;

12 (3) to ensure appropriate public notice of
13 proposed actions;

14 (4) to provide certification requirements of
15 projects to be funded; and

16 (5) to otherwise guide the work of the board
17 and carry out the provisions of the Land, Wildlife and Clean
18 Energy Act.

19 D. The board shall evaluate each proposed project
20 using the following criteria:

21 (1) the project's potential for conserving
22 land or wildlife or increasing clean energy development;

23 (2) whether the project leverages or matches
24 other public or private investment in, or in-kind support of,
25 conservation and clean energy development projects, including

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1 allowing local governments to match funding by adopting open
2 space and agriculture protection policies;

3 (3) the impacts of the project, including
4 benefits or avoidance of waste;

5 (4) the expertise of the qualified entity
6 proposing the project in conducting conservation or clean
7 energy development projects;

8 (5) the project's potential to increase
9 collaboration among the state and its political subdivisions,
10 other public and private conservation and clean energy entities
11 and landowners and other interested individuals or entities;

12 (6) an appropriate balance of funding of
13 conservation projects and clean energy development projects
14 over the time that reflects the board's strategic plan;

15 (7) for conservation projects:

16 (a) the project's support of private
17 ownership of working farms and ranches;

18 (b) the project's assistance to private
19 landowners in land and wildlife conservation;

20 (c) the project's potential for
21 conserving land and water in association with ecosystem or
22 natural area protection or habitat enhancement; or

23 (d) the project's potential to improve
24 public access to land, water, wildlife and natural areas and
25 outdoor recreation opportunities, including hunting and

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1 fishing; and

2 (8) for clean energy development projects:

3 (a) how the project will increase energy
4 efficiency or conservation; or

5 (b) how the project will increase energy
6 production using solar, biomass, geothermal, hydrogen or wind
7 power.

8 E. Projects involving acquisition of land or water
9 rights shall respect private property rights with a preference
10 for leaving land and water rights in private ownership through
11 purchase of negotiated conservation easements or voluntary
12 access agreements to ensure public benefit.

13 F. No provision of the Land, Wildlife and Clean
14 Energy Act shall be construed to alter state law regarding
15 access to the commercial development of, extraction from or
16 status of a mineral estate.

17 G. The board may:

18 (1) administer the land, wildlife and clean
19 energy fund and make grants and loans from the fund for
20 projects authorized by the Land, Wildlife and Clean Energy Act;

21 (2) acquire and manage, or assign management
22 of, whole or partial interests in land or water rights,
23 including easements;

24 (3) make grants or loans to or otherwise
25 contract with qualified entities for approved conservation

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1 projects and clean energy development projects;

2 (4) fund wildlife management projects;

3 (5) request the authority to issue

4 conservation bonds or clean energy bonds to finance eligible
5 conservation projects or clean energy development projects;

6 (6) apply for, accept and expend funds from
7 private and public sources; and

8 (7) enter into contracts or agreements with
9 qualified entities as necessary to achieve the purposes of the
10 Land, Wildlife and Clean Energy Act.

11 H. The board shall meet at least quarterly, review
12 proposed conservation projects and clean energy development
13 projects and, in consultation with the director, select those
14 projects to be financed with money from the land, wildlife and
15 clean energy fund or with the proceeds of bonds issued by the
16 authority for those purposes.

17 I. The board shall issue an annual report to the
18 legislature and the governor that includes:

19 (1) a list and description of each project
20 funded that year and the status of any other ongoing projects;

21 (2) a summary of the board's revenues and
22 expenses, including a combined balance sheet and statement of
23 revenue, expenditures and changes in fund balances;

24 (3) the independent auditor's report or
25 letter;

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1 (4) a summary of the board's five-year
2 strategy for carrying out the purposes of the Land, Wildlife
3 and Clean Energy Act;

4 (5) information on how qualified entities may
5 apply for funding of eligible projects; and

6 (6) an evaluation of the social, economic and
7 ecological effects of its program.

8 Section 6. [NEW MATERIAL] CONSERVATION AND CLEAN ENERGY
9 DEVELOPMENT PROJECTS--LIMITATIONS ON ACQUISITION OF LAND AND
10 WATER RIGHTS.--

11 A. Land or water rights shall not be acquired for
12 conservation or clean energy development projects through
13 condemnation or the exercise of the power of eminent domain nor
14 for any purpose other than that authorized by the Land,
15 Wildlife and Clean Energy Act.

16 B. Money in the land, wildlife and clean energy
17 fund shall not be used to acquire water rights that:

18 (1) are served by or owned by an acequia or
19 community ditch established pursuant to Chapter 73, Article 2
20 or 3 NMSA 1978 unless the water rights are acquired by an
21 acequia or community ditch;

22 (2) are served by an irrigation district
23 established pursuant to Chapter 73, Article 10 NMSA 1978 or a
24 conservancy district established pursuant to Chapter 73,
25 Article 14 NMSA 1978, except through contractual arrangement

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1 with the district board of directors or as a special water
2 users association established pursuant to Chapter 73, Article
3 10 NMSA 1978;

4 (3) will result in an increase in net
5 depletions in the affected river or basin that will create
6 cumulative adverse impacts on existing water users, delivery
7 systems or compact obligations;

8 (4) cost more than the appraised market value
9 to purchase or lease based upon the best available information
10 and considering the seniority and the consistent, historic
11 beneficial use of the water rights;

12 (5) do not have sufficient seniority and
13 consistent, historic beneficial use to effectively contribute
14 to the purposes of the Land, Wildlife and Clean Energy Act;

15 (6) have not been adjudicated or licensed by
16 the state engineer or do not comply with all state engineer
17 rules governing surface and ground water transfer applications
18 or that clearly conflict with the state water plan;

19 (7) will be used to authorize the exportation
20 of water from one surface drainage basin or declared
21 underground water basin to another; or

22 (8) will, upon cessation of use, increase
23 depletions to a river or an underground water basin.

24 C. Water rights purchased with money from the land,
25 wildlife and clean energy fund or the proceeds of bonds issued

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1 pursuant to the Land, Wildlife and Clean Energy Act shall not
2 be sold to the United States.

3 D. A conservation project that includes the
4 purchase of land or an interest in land with a public or
5 private conservation agency shall, to the extent required by
6 law, require that title to the land or interest in land be held
7 by the state or a political subdivision of the state, or by the
8 private conservation agency and the state, or political
9 subdivision of the state, as cotenants with an undivided
10 interest in the land or interest in the land. If the private
11 conservation agency fails to perform its management, monitoring
12 or enforcement duties as they relate to a conservation project,
13 the ownership interest of any land or interest in land
14 purchased with state funds for that project shall revert to the
15 participating governmental entity until the interest is
16 transferred to another private conservation agency chosen by
17 the owner of the underlying estate, in the case of a
18 conservation easement, or by the participating government
19 entity if the land is owned in fee.

20 E. All projects, including the purchase of land,
21 shall guarantee that the project or land shall be maintained so
22 as to protect the public health and welfare.

23 F. Conservation projects that reduce the taxable
24 land base of a political subdivision that is not a partner in
25 the proposed project shall provide compensation for the

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1 estimated revenue loss based on the land's use at the time of
2 purchase to the affected political subdivision from money in
3 the land, wildlife and clean energy fund or the proceeds of
4 bonds issued pursuant to the Land, Wildlife and Clean Energy
5 Act.

6 Section 7. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY
7 FUND--CREATION--USE.--

8 A. The "land, wildlife and clean energy fund" is
9 created in the state treasury and shall consist of
10 distributions made to the fund from the conservation and clean
11 energy bonding fund; gifts, grants and donations; other revenue
12 credited to the fund; and income from investment of the fund.
13 Balances in the fund at the end of a fiscal year shall not
14 revert to the general fund. The department shall administer
15 the fund on the board's behalf.

16 B. Money in the land, wildlife and clean energy
17 fund is appropriated to the board to make loans or grants to,
18 or otherwise contract with, qualified entities for conservation
19 projects and clean energy development projects as authorized by
20 the Land, Wildlife and Clean Energy Act and for expenses
21 necessary to carry out the provisions of that act.
22 Disbursements from the fund shall be made upon warrants drawn
23 by the secretary of finance and administration pursuant to
24 vouchers signed by the chair of the board or the chair's
25 authorized representative.

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1 Section 8. [NEW MATERIAL] CONSERVATION AND CLEAN ENERGY
2 BONDING FUND--CREATED--PLEDGE OF MONEY IN THE FUND--
3 DISTRIBUTION.--

4 A. The "conservation and clean energy bonding fund"
5 is created as a special fund within the authority. The
6 authority shall administer the fund as a special account. The
7 fund shall consist of oil and gas conservation tax revenues
8 distributed to the fund by law; appropriations by the
9 legislature to carry out the purposes of the Land, Wildlife and
10 Clean Energy Act; and any other public or private money
11 dedicated to the fund. The fund's earnings shall be credited
12 to the fund. Balances in the fund at the end of any fiscal
13 year shall remain in the fund, except as provided in this
14 section.

15 B. Money in the conservation and clean energy
16 bonding fund shall be pledged irrevocably by the authority for
17 the payment of principal and interest on conservation bonds and
18 clean energy bonds issued pursuant to the Land, Wildlife and
19 Clean Energy Act. Money in the fund is appropriated to the
20 authority for the purposes of paying debt service, including
21 redemption premiums, on the bonds and expenses incurred in the
22 issuance, payment and administration of the bonds.

23 C. On the last day of January and July of each
24 year, the authority shall estimate the amount needed to make
25 debt service payments on the bonds issued pursuant to the Land,

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1 Wildlife and Clean Energy Act, plus the amount that may be
2 needed for any required reserves, administrative expenses or
3 obligations coming due during the next twelve months from the
4 fund, and distribute to the land, wildlife and clean energy
5 fund any balance in the conservation and clean energy bonding
6 fund above the estimated amounts; provided that if there are no
7 bonds issued or outstanding, then distributions from the oil
8 and gas conservation tax shall be transferred to the land,
9 wildlife and clean energy fund upon receipt by the authority.

10 D. The bonds issued pursuant to the Land, Wildlife
11 and Clean Energy Act shall be payable solely from the fund or
12 such other special funds as may be provided by law and that do
13 not create an obligation or indebtedness of the state within
14 the meaning of any constitutional provision. A breach of any
15 contractual obligation incurred pursuant to the Land, Wildlife
16 and Clean Energy Act shall not impose a pecuniary liability or
17 a charge upon the general credit or taxing power of the state,
18 and the bonds are not general obligations for which the state's
19 full faith and credit is pledged.

20 E. The state pledges that the conservation and
21 clean energy bonding fund shall be used only for the purposes
22 specified in this section and shall first be pledged to pay the
23 debt service on the bonds issued pursuant to the Land, Wildlife
24 and Clean Energy Act. The state further pledges that any law
25 authorizing the distribution of taxes or other revenues to the

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1 fund or authorizing expenditures from the fund shall not be
2 amended or repealed or otherwise modified so as to impair the
3 bonds to which the fund is dedicated as provided in this
4 section.

5 Section 9. [NEW MATERIAL] CONSERVATION BONDS AND CLEAN
6 ENERGY BONDS AUTHORIZED.--

7 A. The authority is authorized to issue and sell
8 from time to time bonds, known as "conservation bonds" or
9 "clean energy bonds", at the board's request and in compliance
10 with the Land, Wildlife and Clean Energy Act and the New Mexico
11 Finance Authority Act for the purpose of financing conservation
12 projects or clean energy development projects when the board
13 has certified the need for the bonds.

14 B. The net proceeds from the bonds are appropriated
15 to the board for the purpose of financing conservation projects
16 and clean energy development projects pursuant to the Land,
17 Wildlife and Clean Energy Act.

18 C. Each series of bonds shall be issued pursuant to
19 the provisions of the New Mexico Finance Authority Act, except
20 as otherwise provided in the Land, Wildlife and Clean Energy
21 Act.

22 D. The authority may additionally secure the bonds
23 issued pursuant to this section by a pledge on the money in the
24 public project revolving fund as determined by the authority.

25 E. The authority may purchase bonds issued pursuant

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1 to this section with money in the public project revolving fund
2 pursuant to the provisions of Section 6-21-6 NMSA 1978.

3 Section 10. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN
4 ENERGY ACT IS FULL AUTHORITY FOR ISSUANCE OF BONDS--BONDS ARE
5 LEGAL INVESTMENTS.--

6 A. The Land, Wildlife and Clean Energy Act and the
7 New Mexico Finance Authority Act shall, without reference to
8 any other act of the legislature, be full authority for the
9 issuance and sale of conservation bonds and clean energy bonds,
10 which bonds shall have all the qualities of investment
11 securities under the Uniform Commercial Code and shall not be
12 invalid for any irregularity or defect or be contestable in the
13 hands of bona fide purchasers or holders thereof for value.

14 B. Conservation bonds and clean energy bonds are
15 legal investments for any person or board charged with the
16 investment of any public funds and are acceptable as security
17 for any deposit of public money.

18 Section 11. [NEW MATERIAL] BONDS TAX EXEMPT.--All
19 conservation bonds and clean energy bonds shall be exempt from
20 taxation by the state or any of its political subdivisions.

21 Section 12. [NEW MATERIAL] THIRD-PARTY ENFORCEMENT
22 LIMIT--NOTICE OF TRANSFER OF PROPERTY.--

23 A. No person shall have a third-party enforcement
24 right pertaining to a conveyance made pursuant to the Land,
25 Wildlife and Clean Energy Act, except against the state or a

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1 political subdivision of the state.

2 B. No conservation easement acquired under the
3 Land, Wildlife and Clean Energy Act that restricts the transfer
4 of the conservation easement may be transferred to a third
5 party without prior legal notice to the current owner of the
6 underlying property.

7 Section 13. Section 7-1-6.21 NMSA 1978 (being Laws 1985,
8 Chapter 65, Section 7, as amended) is amended to read:

9 "7-1-6.21. DISTRIBUTION TO OIL AND GAS RECLAMATION FUND,
10 CONSERVATION AND CLEAN ENERGY BONDING FUND AND THE OIL
11 CONSERVATION DIVISION OF THE ENERGY, MINERALS AND NATURAL
12 RESOURCES DEPARTMENT.--

13 A. With respect to any period for which the rate of
14 the tax imposed by Section 7-30-4 NMSA 1978 is nineteen-
15 hundredths percent, a distribution pursuant to Section 7-1-6.20
16 NMSA 1978 shall be made to the oil and gas reclamation fund in
17 the amount equal to two-nineteenths of the net receipts
18 attributable to the tax imposed under the Oil and Gas
19 Conservation Tax Act.

20 B. With respect to any period for which the rate of
21 the tax imposed by Section 7-30-4 NMSA 1978 is eighteen-
22 hundredths percent, a distribution pursuant to Section 7-1-6.20
23 NMSA 1978 shall be made to the oil and gas reclamation fund in
24 the amount equal to one-eighteenth of the net receipts
25 attributable to the tax imposed under the Oil and Gas

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1 Conservation Tax Act.

2 C. A distribution pursuant to Section 7-1-6.20 NMSA
3 1978 shall be made to the conservation and clean energy bonding
4 fund in an amount equal to one-half of the net receipts
5 attributable to the tax imposed by the Oil and Gas Conservation
6 Tax Act.

7 D. A distribution pursuant to Section 7-1-6.20 NMSA
8 1978 shall be made to the oil conservation division of the
9 energy, minerals and natural resources department in an amount
10 equal to one thirty-eighth of the net receipts attributable to
11 the tax imposed by the Oil and Gas Conservation Tax Act to fund
12 the inspection and enforcement activities of the division as
13 authorized by law."

14 Section 14. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2007.

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